IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3084 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

D.H.& SONS (ENGINEERS) THROUGHPARTNER HEMANTBHAI K BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3084 of 2005

MR MP PRAJAPATI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 27/04/2005

ORAL JUDGEMENT

Rule.

1. Mr. Prachhak, learned A.G.P. waives service of rule for respondent nos.1, 2 and 3. With the consent of the learned Advocates appearing for both the sides, the matter is taken up for final hearing on today.

2. Short facts of the case are that the petitioner was granted land admeasuring 1316 sq mtr bearing survey no.235 of Village Valavad, Tal Shihor vide order dtd.23.12.1996 of the District Collector. It appears that the petitioner thereafter deposited the amount as fixed by the District Collector at the rate of Rs.32 per sq mtr and the possession of the land was also handed over. It also appears that there was the difficulty to the petitioner and as a result thereof the petitioner could not complete the construction of factory within the stipulated time limit. It appears that thereafter since the construction was not completed within the stipulated time limit the proceedings were initiated and ultimately on 28.08.2003, the order came to be passed by the Collector whereby for breach of the condition of not completing the construction within the stipulated time limit and for using the land for industrial purpose, the land was ordered to be taken back. It appears that the petitioner carried the matter before the State Government by preferring revision and the said revision came to be dismissed and the order of the District Collector was confirmed. It is under these circumstances, the petitioner has approached to this Court by preferring this petition.

2. Heard Mr.Prajapati, learned Advocate for the petitioner and Mr.Prachhak, learned A.G.P. for the respondent authority. It is has been stated that on 14.03.2005 when this Court considered the matter for the first time the statement was made by the learned Advocate for the petitioner that the petitioner is ready to pay the difference of the rate prevailing now and the rate at which the land has been allotted to the Government if the matter is considered for extension of time. In response to the aforesaid order dtd.14.03.2005 passed by this Court today Mr.Prachhak, learned A.G.P. has placed on record the valuation made by the District Valuation Committee of the land in question and as per the report dtd.05.04.2005 received by him from the office of the Collector, valuation of the land is assessed at Rs.42 per sq mtr and the said report is taken on record. Therefore, it appears that there is no dispute on the point that the petitioner has made payment when the land came to be allotted to him earlier at the rate of Rs.32 per sq mtr, and, therefore, in view of the report of the Valuation Committee referred to hereinabove the

difference of the valuation would come to Rs.10 per sq mtr.

3. The question which is required to be considered is as to whether the order for forfeiture was required to be passed by the Collector for the breach of the condition of not making the construction within the stipulated time limit and using the land for industrial purpose or whether the Collector was required to consider the matter by exercising the discretion for extension of time by imposing penalty upon the petitioner and to give the opportunity to the petitioner to complete the construction and to make the use of the land for industrial purpose for which it was granted. In view of the decision of this Court reported at 1197 (2) GLH 633 in the case of Dahyabhai Lalsas (through his legal heirs and representative Vs.The State of Gujarat,the condition for completing the construction within the stipulated time limit is held to be directory and not mandatory.

4. Apart from the above, it was also required for the District Collector to consider as to whether there were circumstances beyond the control of the petitioner due to which the construction could not be completed within the stipulated time limit. If the construction is not completed within the stipulated time, as a consequence thereof the land not would be used for the industrial purpose. Therefore, it appears that, in view of the above referred decision of this Court, the order of forfeiture ought not have been passed by the Collector and the Collector ought to have extended the time by imposing suitable penalty upon the petitioner. It may be that while exercising such discretion the Collector may also require the defaulted person to pay the difference of the market price with a view to see that the defaulter may not be in a position to take any undue benefit of his own default. However, it appears that the aforesaid aspects is not considered by the Collector while exercising the power of forfeiture of the land.

5. Mr.Prajapati, the learned Counsel for the petitioner during the course of the hearing under the instruction of the his client has stated that the petitioner undertakes to complete the construction and to start using the premises for industrial purpose if it is so permitted. Therefore, considering the stands of the petitioner, I find that keeping in view the above referred decision of this Court when the position of law is settled no useful purpose would be served in remanding the matter and therefore if the petitioner is directed to pay the difference of the market price as referred hereinabove

and if the petitioner pays the penalty of Rs.5,000/-, the time for completing the construction can be extended for a period of one year. The aforesaid will not put the State into the loss of the revenue at the same time after recovering the penalty the land can be made used for industrial purpose. In any case such extension cannot be considered for seeking further extension and in any case if the petitioner fails to complete the construction and use the land for industrial purpose within time which may be extended, the petitioner would be required to surrender the land to the State Government.

6. In view of the above, the order passed by the Collector and its confirmation thereof by the State Government for forfeiture of the land in question are quashed and set aside on condition that the petitioner deposits the amount of Rs.13,160/- being the difference of the market value at the time when the land was allotted and the price prevailing now and further deposits the amount of Rs.5,000/- total Rs.18160/- within period with the District Collector within period from one month from today. The aforesaid shall be with the additional condition that the petitioner files undertaking to this Court for conceding that upon failure to complete the construction within period of one year after the plants are sanctioned or revalidated by the District Collector and upon failure to use the land therefrom within period of 1 year for industrial purpose, Government shall be at the liberty to take the possession of the land in question on the ground of breach of the condition and such undertaking shall be filed within period of 10 days from today.

7. After the aforesaid amount is deposited and the undertaking is filed with this Court, it would be open to the petitioner to move the Collector for afresh sanction or revalidation of the construction plan and the Collector shall pass consequential order for such purpose within 4 weeks from making of such application by the petitioner with the copy of the order of this Court and shall complete the construction within period of 1 year therefrom.

8. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances there shall be no order as to costs.

Direct Service.

(JAYANT PATEL,J.)

27.04.2005
amit